(4)

No. 85-546

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1985

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UNITED STATES OF AMERICA,
*Petitioner,*

v.

FLORENCE BLACKETTER MOTTAZ,
on behalf of herself and all others
similarly situated,
*Respondent.*

---

**On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

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## MOTION AND BRIEF OF THE AMERICAN LAND TITLE ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE UNITED STATES

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Dated: January 9, 1986

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## MOTION OF THE AMERICAN LAND TITLE ASSOCIATION REQUESTING LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF THE UNITED STATES

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Pursuant to Rule 36 of the Rules of the Supreme Court of the United States, the American Land Title Association (the ALTA) respectfully moves the Court for leave to file the accompanying "Brief of the American Land Title Association as *Amicus Curiae* in Sup-

port of the United States." The grounds for this motion are stated below and in the section of the accompanying brief headed "Interest of *Amicus Curiae*."

The ALTA requested each party's written consent to the filing of its *amicus curiae* brief as required under Rule 36. Petitioner United States consented to the filing of the brief by letter from the Solicitor General, reproduced as Exhibit A to this motion. Respondent Mottaz withheld her consent by letter from counsel, reproduced as Exhibit B.

The ALTA is the national trade association of the land title industry. Members of the ALTA depend on long-established legal doctrines concerning real estate and claims to real estate in ascertaining and insuring the rights of real estate purchasers, mortgage lenders and others, and in litigating matters pursuant to obligations under title insurance policies. As more fully set forth in the accompanying brief, the ALTA has an interest in the pending case because the decision by the United States Court of Appeals for the Eighth Circuit is fundamentally wrong and a decision by this Court affirming the decision below would destroy critical principles affecting the title to real property which have been developed over the years throughout the United States.

The ALTA believes that it is uniquely positioned to inform the Court regarding the adverse consequences of the Eighth Circuit's error for private persons who have relied on the established principles by which stability of real estate titles has traditionally been secured. As more fully set forth in the accompanying brief, the petitioner is unlikely to address the same issues that concern the ALTA.



For the reasons set forth above and in the accompanying brief, the motion for leave to file the attached brief as *amicus curiae* should be granted.

Respectfully submitted,

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*Attorneys for the American Land Title Association*

Dated: January 9, 1986

EXHIBIT A

U.S. DEPARTMENT OF JUSTICE
Office of the Solicitor General
Washington, D.C. 20530

December 12, 1985

Lucinda O. McConathy, Esq.
Bell, Boyd & Lloyd
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4678

Re: *United States* v. *Mottaz*, No. 85-546

Dear Ms. McConathy:

As requested in your letter of December 9, 1985, I hereby consent to the filing of a brief *amicus curiae* on behalf of the American Land Title Association.

Sincerely,

/s/ Charles Fried
CHARLES FRIED
Solicitor General



EXHIBIT B

DERCK AMERMAN
Attorney at Law
2408 Central Avenue, N.E.
Minneapolis, Minnesota 55418-3792
789-8805

December 11, 1985

Ms. Lucinda O. McConathy
Bell, Boyd & Lloyd
1775 Pennsylvania Avenue N.W.
Washington, DC 20006

RE: U.S. v. Mottaz, et al.

Dear Ms. McConathy:

This is in response to your letter of December 9, 1985 wherein you requested written consent to your filing an *amicus curiae* brief.

Please be advised that the answer is "No".

Yours very truly,

/s/ [Illegible]
DERCK AMERMAN

DA:dn

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**On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit**

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## BRIEF OF THE AMERICAN LAND TITLE ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE UNITED STATES

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### INTEREST OF THE *AMICUS CURIAE*

The American Land Title Association is the national trade association of the land title industry. The ALTA has approximately 2,000 members, including land title insurers, title insurance agents, abstractors and associate members. The ALTA and its members work to facilitate the safe, certain and efficient transfer of title

to residential and commercial real estate throughout the country. In the course of ascertaining and insuring the rights of real estate purchasers, mortgage lenders and others, and in the course of litigation pursuant to obligations under title insurance policies, members of the ALTA depend upon long-established legal doctrines concerning real estate and claims to real estate. Certainty and predictability of the laws affecting rights in real estate are crucial to the ALTA and its members.

The ALTA has an interest in the pending case because the decision by the United States Court of Appeals for the Eighth Circuit is fundamentally wrong. If left uncorrected, that decision would create confusion and uncertainty and would impose tremendous unanticipated risks on all persons with an interest in land—homeowners, businesses, farmers, lenders and ALTA members alike.

First, the Eighth Circuit erred in declaring that in a dispute over land no cause of action accrues within the meaning of a statute of limitation where the claimant argues that he retains title to the land.[1] Under the logic—or illogic—of the Eighth Circuit's decision, any claim asserting title to land could be litigated, no matter when the events occurred which gave rise to the claim. Only after litigation on the merits and a determination whether the claimant retained title to the land at issue, could a court decide whether a claim had accrued within the meaning of a statute of limitation. People who own land, buy land, and assist in the process of buying and selling land depend upon statutes of limitations, marketable title acts and other time bars in determining who holds title and as protection from stale claims. Statutes of limitations and other time bars contribute to the predictability and stability of land ownership, and any misunderstanding as to their application would have grave

[1] Mottaz v. United States, 753 F.2d 71, 74 (8th Cir. 1985), *cert. granted*, —— U.S. ——, 106 S.Ct. 405 (1985).



consequences for the ALTA and its members, as well as other persons with interests in land.

Second, the Eighth Circuit erred in declaring that a claim for land based on a conveyance by Indians in violation of a federal restriction on alienation can never be barred because the original transfer was void.[2] If that were true, conceivably every title examination would require tracing the chain of title all the way back to its beginning and historical research to determine whether any transfer involved an Indian and, if so, whether any restrictions had existed and whether they had been satisfied. The customary reliance of land purchasers, lenders, and title insurers on matters of public record would very likely have to be reevaluated.

Third, the Eighth Circuit erred in declaring that neither state nor federal statutes of limitations apply to Indian land claims because of the federal government's generally protective policies toward Indians.[3] In essence, the court of appeals held that any Indian claim relating to land may be brought at any time in the future.[4] Under that view, no land title is secure.

[2] *Id.*

[3] *Id.*

[4] There are a number of other pending and potential Indian land claims where ancient land transfers are alleged to have been invalid, so the Eighth Circuit's error has significance far beyond the case at hand. *See* Catawba Indian Tribe v. South Carolina, 718 F.2d 1291 (4th Cir. 1983), *reh'g en banc*, 740 F.2d 305 (1984), *cert. granted*, —— U.S. ——, 105 S.Ct. 2762 (1985); Cayuga Indian Nation v. Cuomo, 565 F. Supp. 1297 (N.D.N.Y. 1983); Canadian St. Regis Band of Mohawk Indians v. New York, 97 F.R.D. 453 (N.D.N.Y. 1983). *See also* Statute of Limitations Claims List, 48 Fed. Reg. 51204-51253 (Nov. 7, 1983); 48 Fed. Reg. 13698-13920 (Mar 31, 1983) (Department of the Interior listing of potential Indian land claims in the "Eastern Area"). *Cf.* Alabama Coushatta Tribe v. United States, Cong. Ref. No. 3-83 (Ct. Cl. 1983) (claiming tribe possesses unextinguished aboriginal title to 17 counties in Texas).

The ALTA has filed this *amicus* brief because the above-mentioned issues are so important and because the briefs of the parties, both in the Eighth Circuit and in this Court (respecting the Petition for Certiorari), focus mainly on other issues such as the federal government's sovereign immunity, the nature of the claim, and which of two federal statutes of limitations, if any, might apply to the claim.[5] The interests of the ALTA and other private parties throughout the nation in a stable, secure and rational land title system would not be adequately protected otherwise.

As this Court long-ago explained:

> The best interests of society require that causes of action should not be deferred an unreasonable time. This remark is peculiarly applicable to land titles. Nothing so much retards the growth and prosperity of a country as insecurity of titles to real estate.

[5] It should be recognized that the United States is in a peculiar position, fraught with overtones of a conflict of interest, when it is sued by Indians or Indian tribes. As defendant in such a case, the government seeks to protect the public treasury. In other cases, the government is the Indians' "guardian" and may sue private parties and states to protect Indian rights. *E.g.*, Montana v. United States, 450 U.S. 544 (1981); United States v. Winans, 198 U.S. 371 (1905). *Cf.* Salt River Pima-Maricopa Indian Community v. Arizona Sand & Rock Co., 353 F. Supp. 1098 (1972) (Indian trespass damage claim against federal licensees created conflict of interest and United States Attorney General refused to represent Indians). Because of its dual role, when the United States is a defendant in Indian land claims it has an incentive to pursue most vigorously the narrow defenses available to the United States but not to others. In so doing it may preserve the Indians' ability to seek redress from others.

As *amicus*, the ALTA does not address which of the federal statutes of limitations under discussion may apply to the particular claim presented. The ALTA's concern, and the focus of this brief, is on the Eighth Circuit's misconception of the general operation of all statutes of limitations and on its misunderstanding of the law relating to Indian land claims.



> Labor is paralysed where the enjoyment of its fruits is uncertain; and litigation without limit produces ruinous consequences to individuals.[6]

The ALTA's purpose in filing this *amicus* brief is to prevent such dire results.

## SUMMARY OF ARGUMENT

The Eighth Circuit totally misconceived the meaning of the term "accrued" and the operation of statutes of limitations. A cause of action to recover land or the value of land has accrued once the claimant is able to assert the action in court. A statute of limitation measures time from the moment that a cause of action accrues, and, once the time limit specified in a statute of limitation is passed, the statute bars the action from being litigated in court. It makes no difference whether the claimant is right or wrong on the merits.

In addition, relying on a misinterpretation of this Court's decision in *Ewert* v. *Bluejacket*,[7] the Eighth Circuit erred in holding that no statute of limitation can bar a claim that a transfer of Indian lands violated a federal restriction on alienation. In *Ewert* the Court prevented a federal employee involved in Indian affairs from retaining land that he had purchased from an Indian in spite of a federal law prohibiting such persons from trading with Indians. The issue was whether the wrongdoer could be allowed to assert the equitable defense of laches, not whether a claim based on an allegedly void transfer of Indian land could be barred by a statute of limitation. In fact, in *Joines* v. *Patterson*[8]

[6] Lewis v. Marshall, 30 U.S. (5 Pet.) 470, 477-8 (1831). *See also Developments In Law—Statutes of Limitations*, 63 Harv. L. Rev. 1177, 1185 (1950) ("There comes a time when one ought to be secure in his reasonable expectations that the slate has been wiped clean of ancient obligations.").

[7] Ewert v. Bluejacket, 259 U.S. 129 (1922).

[8] Joines v. Patterson, 274 U.S. 544 (1927).

this Court rejected the argument adopted by the Eighth Circuit, holding that a statute of limitation barred a claim to recover Indian land even if it was conveyed in violation of the law. A number of decisions by this Court and various lower courts demonstrate that although Indians may attempt to avoid transfers of their lands that occurred in violation of federal restrictions on alienation in certain circumstances, their claims may be barred in other circumstances. Furthermore, neither precedent nor federal policy support the Eighth Circuit's conclusion that a federal statute of limitation may not apply to such claims.

## ARGUMENT

### I. Introduction.

Mrs. Mottaz inherited an interest in three Indian allotments in the early 1950s. The United States, through the Secretary of the Interior, instituted a program of selling such Indian allotments in 1953. Although the Department of the Interior sent the Indians letters requesting the written consent of the Indians, the Department assumed their consent if they did not respond to the request. In 1953 the Department sent such a letter to Mrs. Mottaz. In 1954 the United States sold Mrs. Mottaz's land to itself,[9] and those allotments are now in the Chippewa National Forest. Mrs. Mottaz may have received payment in 1955, since the federal government customarily made arrangements to pay for such allotments shortly after purchase. In any event, she was informed by 1967 that she held no interest in those three tracts of land when the Bureau of Indian Affairs provided her a list of her interests in federally-protected lands which excluded the three allotments in issue. Only on December 30, 1981, did she file a complaint alleging that the sale of those allotments was void.

[9] The sale of these and other allotments are sometimes referred to as "secretarial transfers" since the Secretary of the Interior arranged such sales to the federal government.



The United States District Court for the District of Minnesota granted summary judgment for the defendant, the United States, on the ground that the action was barred by a six-year federal statute of limitation for civil actions against the United States, 28 U.S.C. § 2401 (a) (1982). Before the United States Court of Appeals for the Eighth Circuit the United States argued that the claim also was barred under a twelve-year federal statute of limitation for quiet title actions, 28 U.S.C. § 2409a(f) (1982). The Eighth Circuit sought to preserve Mrs. Mottaz's ability to recover, holding that no federal statute of limitation may bar a claim by an Indian to hold title to land that was "wrongfully alienated" at some time in the past.[10] The Eighth Circuit may have been uncomfortable with the conduct of the United States, as alleged by the plaintiffs,[11] but it misstated the law. Its decision unnecessarily endangers the land titles of thousands of innocent people and should be reversed.

### II. A Claim Has Accrued Within The Meaning Of A Statute of Limitation Whenever A Suit May Be Commenced.

The concept of accrual is basic to litigation and to the application of all time bars, including statutes of limitations. Black's Law Dictionary states, "A cause of action 'accrues' when a suit may be maintained thereon." [12] The moment an action accrues marks the begin-

[10] *Mottaz*, 753 F.2d at 74.

[11] No determination has been made whether the sale of Mrs. Mottaz's allotments, in fact, violated any federal restrictions on alienation. Such secretarial transfers may have been perfectly legal. But the Eighth Circuit's emphasis on a "fair" result suggests that it viewed the United States' conduct as unfair to Mrs. Mottaz. *See Mottaz*, 753 F.2d at 75.

[12] Black's Law Dictionary, definition of "accrue," at 37 (4th ed. 1968). *See also, e.g.*, Impro Products, Inc. v. Block, 722 F.2d 845, (D.C. Cir. 1983), *cert. denied*, —— U.S. ——, 105 S.Ct. 327 (1984) (a cause of action accrues when right to resort to court is perfected); Lamb v. Amalgamated Labor Life Ins. Co., 602 F.2d

ning of a time period during which the action may be brought before a court, and a statute of limitation specifies a deadline for bringing the cause of action.[13] As this Court explained in *Rawlings* v. *Ray*: [14]

> The words [in the applicable statute of limitation] "after the cause of action shall accrue" . . . have their usual meaning and refer to "a complete and present cause of action."

Similarly, in *Cope* v. *Anderson*,[15] the Court said:

> [T]he question of when the applicable state statute of limitations begins to run depends upon when . . . [the plaintiff] is empowered . . . to bring suit.

A claimant usually may sue (and the claimant's cause of action usually accrues) once the transaction or event which is the basis of the claim has occurred.[16] Even

155, 158 (8th Cir. 1979) (under Missouri law, a claim for relief accrues when a right exists to institute a suit for its enjoyment).

[13] Black's Law Dictionary, definition of the term "limitation," (4th ed. 1968) at 1077 ("[A statute of limitation is a] restriction by statute of the right of action to certain periods of time, after the accruing of the cause of action."). *See also Lamb*, 602 F.2d 155 (under Missouri law, statute of limitation begins to run when a claim for relief accrues).

[14] Rawlings v. Ray, 312 U.S. 96, 98 (1941).

[15] Cope v. Anderson, 331 U.S. 461, 464 (1947).

[16] This Court, for example, explained in Grayson v. Harris, 279 U.S. 300 (1929), that a statute of limitation for suits to recover land begins to run on a title holder's action when another person either asserts a right to the land or takes possession of it in conflict with the title holder's interest. The Court considered that a cause of action accrues whenever someone asserts rights in the land adverse to or in conflict with the title holder's interest. As a result, the Court held that a statute of limitation had not run on a claim where the conflicting assertion of right to the land occurred within the limitation period.

As the Court said in *Cope*, 331 U.S. at 466: "[A] cause of action is the fact or combination of facts which gives rise to a right of action, the existence of which affords a party a right to judicial interference in his behalf."



where a claimant seeking to recover title to land alleges that a previous transfer of title was ineffective and void, the date the cause of action accrued does not depend upon resolution of the allegation that the transfer was void. The cause of action in such a case—the demand for redress—accrued at the time of the transfer since that is the event giving rise to a conflicting assertion of rights.

For example, in *Joines* v. *Patterson* [17] this Court rejected the argument that a statute of limitation had not run against a claim to recover former Indian allotment lands because the underlying transfer was invalid. In that case, when the Indian allottee died her interest in the lands passed to her husband, a non-Indian, and to her five minor children. The husband, purporting to act as guardian for the children, sold those lands, but, some number of years later, he and they sued the purchaser to recover them. They argued that the applicable statute of limitation had not begun to run "since no interest passed to [the purchaser]." [18] The Court specifically stated that the court below had erred in accepting that view,[19] and later said in discussing the applicable statute of limitation:

> It is of the nature of the statute of limitation, when applied to civil actions, in effect, to mature a wrong into a right, by cutting off the remedy.[20]

Thus, if the claimant has not filed the action within the time specified by the applicable statute of limitation, the

[17] Joines v. Patterson, 274 U.S. 544 (1927).

[18] *Id.* at 548.

[19] *Id.*.

[20] *Joines*, 274 U.S. at 553 (*quoting* Ferguson v. Peden, 33 Ark. 150, 155 (1878); Jacks v. Chaffin [illegible]379), 34 Ark. 534, 541; Logan v. Jelks, 34 Ark. 547, 549 (1879)).

In a variety of contexts the Court has repeatedly declared that statutes of limitations do not depend upon whether the plaintiff has

claim is barred, whether or not a claimant could establish title and recover the land if the litigation were allowed to proceed.[21]

Consistent with this Court's directives, in *Wolfe* v. *Phillips*[22] the Tenth Circuit declared with respect to a claim to recover formerly-restricted Indian land:

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valid rights. Rather statutes of limitations operate regardless of whether the plaintiff has valid rights. *E.g.*, Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 463-4 (1975) ("Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting the suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones"); Kavanaugh v. Noble, 332 U.S. 535, 539 (1947) ("[P]eriods [of limitation] are established to cut off rights, justifiable or not . . . * * * Remedies for resulting inequities are to be provided by Congress, not the courts.").

[21] Statutes of limitations may be tolled in various situations, in which case the time will not run against the claimant, extending the deadline for bringing an action. The tolling of a statute of limitation, however, does not change the date on which an action accrues and could be brought by the claimant. *See, e.g.*, Johnson v. United States, 87 F 2d 940 (8th Cir. 1937) (where statute of limitations was tolled for persons disabled from bringing suit, those disabled persons could still bring an action during the period of the disability through their guardians).

In certain circumstances, where Indian land is subject to a federal restriction on alienation that has never been removed, *state* statutes of limitations may be tolled for a related claim. *See* discussion below at 16-18. But that does not alter the date such a claim accrued or the Indian's ability to bring the claim. *Cf.* New Mexico v. Aamodt, 537 F.2d 1102 (10th Cir. 1976), *cert. denied*, 429 U.S. 1211 (1977) (where court stated that federal trusteeship did not deprive Indians of right to sue on their own behalf). Nor does that prevent other defenses from applying in appropriate circumstances, such as federal statutes of limitations or the doctrine of laches or the *bona fide* purchaser doctrine. And once such a restriction on alienation is removed, state statutes of limitations begin to run. *See* discussion below at 16-18.

[22] Wolfe v. Phillips, 172 F.2d 481, 486 (10th Cir. 1949), *cert. denied*, 336 U.S. 968 (1949).



> The [applicable five-year period of limitations] began to run . . . and the instant action became barred . . . irrespective of whether such [allegedly void] deed was valid or void. Therefore, we find it unnecessary to determine the conflicting contentions of the parties with respect to the validity of such deed.

In this case the transaction which gives rise to the complaint occurred in 1953-1955, when the Secretary of the Interior allegedly transferred the land to the federal government improperly, after notifying the plaintiff of its intent to sell the land and documenting the transfer.[23]

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[23] If a suit to recover land is based on allegations of fraud, a right of action accrues—and the applicable statute of limitation begins to run—when the plaintiff becomes aware of the fraud or reasonably should have become aware of the fraud. *E.g.*, Exploration Co. v. United States, 247 U.S. 435 (1918); Latham v. Latham, 184 N.C. 55, 113 S.E. 623 (1922); Ewbank v. Lyman, 170 N.C. 505, 87 S.E. 348 (1915). Similarly, *see* Newman v. Prior, 518 F.2d 97, 100 (4th Cir. 1975) (In an action for fraud in connection with securities law violations, court said: "The statute [of limitation] does not begin to run until the fraud is either actually known or should have been discovered by the exercise of due diligence."). *See also* Akron Presform Mold Co. v. McNeil Corp., 496 F.2d 230, 234 (6th Cir. 1974); Laundry Equipment Sales v. Borg-Warner Corp., 334 F.2d 788, 792 (7th Cir. 1964).

In this case, if the pending claim were viewed as a claim against the United States for conduct akin to fraud, then the question of when the plaintiff should have been aware of the secretarial transfer might become relevant. Also, one of the federal statutes of limitations asserted to bar the action, the twelve-year limitation for actions to quiet title, provides that an action subject to that limitation "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States" to have an interest in the land adverse to the plaintiff's. 28 U.S.C. § 2409a(f) (1982). The United States contends that the plaintiff was aware of an adverse interest in the land by 1955, since her complaint does not deny that she received the letter notifying her the land would be sold and payment for its sale. In any event, the United States contends that she became aware of the adverse interest asserted by the government in 1967, when she received a listing of her property that failed to include the land in dispute. In either case, the claim accrued more than twelve years before the plaintiff brought suit in 1981.

Nevertheless, the Eighth Circuit declared that no action had accrued, apparently confusing the accrual of a cause of action seeking to enforce alleged rights with the underlying rights:

> [I]f the underlying sale of land is void, the concept that a cause of action "accrues" at some point is inapplicable because the allottee simply retains title all along.[24]

The court of appeals' concept of accrual puts the proverbial cart before the horse by requiring litigation on the merits of a claim regardless of when the claim is brought, and by making the application of a time bar such as a statute of limitation depend not upon the passage of time but upon resolution of the question whether the transfer at issue violated the law.[25]

Whether or not the plaintiff in this case might be successful in establishing a right to the lands at issue on the theory that the secretarial transfers were improper, a claim has accrued. And if a statute of limitation is applicable, it started to run when the cause of action accrued. The Eighth Circuit distorted the legal principles relating to causes of action and statutes of limitations to achieve its result.

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[24] *Mottaz*, 753 F.2d at 74.

[25] Indeed, if no claim has accrued, as the Eighth Circuit states, then no claim is properly before the Court. This only reveals the absurdity of saying that no claim has accrued. A claim must accrue to permit the plaintiff to enforce his rights in court. Where a person asserts ownership of land which someone else also purports to own, a conflict exists. Each has accrued a claim which may be asserted in court, even though only one will be successful on the merits.

*See* Stubbs v. United States, 620 F.2d 775, 780-81 (10th Cir. 1980), where (in a non-Indian context) the court of appeals rejected the argument that a federal statute of limitation did not run against the plaintiff's claim for land which the United States had purchased and placed in a national forest because the original transfer had been illegal and a "nullity." The court decided that regardless of the validity of the transaction on which the claim was based, the United States had asserted an interest in the land adverse to the plaintiff's and the claim had accrued, starting the running of the statute of limitation. The claim was barred.



If not corrected, the decision could undermine the security of land titles across the country, to the damage of all persons with any interest in land.[26] As this Court has stated repeatedly for over a century, statutes of limitations are both necessary and beneficial to a society:

> Statutes of limitations, which "are found and approved in all systems of enlightened jurisprudence," *Wood* v. *Carpenter*, 101 U.S. 135, 139 (1879), represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Railroad Telegraphers* v. *Railway Express Agency*, 321 U.S. 342, 349 (1944). These enactments are statutes of repose; and although affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise. *United States* v. *Marion*, 404 U.S. 307, 322, n.14 (1971); *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, 428 (1965); *Chase Securities Corp.* v. *Donaldson*, 325 U.S. 304, 314 (1945); *Missouri, K & T.R. Co.* v. *Harriman*, 227 U.S. 657, 672 (1913); *Bell* v. *Morrison*, 1 Pet. 351, 360 (1828).[27]

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[26] This Court has long recognized the importance of stability in land titles. *See, e.g.*, Summa Corp. v. California, —— U.S. ——, 104 S.Ct. 1751, 1757-8 (1984); Arizona v. California, 460 U.S. 605, 620 (1983); United States v. Title Ins. & Trust Co., 265 U.S. 472, 486 (1924).

[27] United States v. Kubrick, 444 U.S. 111, 117 (1979).

### III. A Claim To Set Aside A Transfer Of Indian Land Can Be Barred Regardless Of Whether The Transfer Was Void.

The court of appeals refused to apply any federal statute of limitation to the claim, primarily relying upon this Court's decision in *Ewert* v. *Bluejacket*,[28] which the court of appeals described as holding that time bars such as state statutes of limitations and the doctrine of laches cannot apply to a claim that Indian land was sold in violation of federal restrictions on alienation because in such cases the Indian retains title to the land.[29] The court below misinterpreted *Ewert* v. *Bluejacket*, which in fact applied the doctrine of laches and contemplated that a claim to recover former Indian land could be barred in certain circumstances.[30]

The *Ewert* v. *Bluejacket* case was one of several disputes over former Indian allotments that involved Paul A. Ewert, a lawyer who was employed between 1908 and 1912 by the federal government to conduct litigation concerning Indian lands.[31] During his tenure with the federal government Ewert bought a number of Indian allotments at bargain prices, sometimes directly from the allottee and sometimes indirectly through an agent. In *Ewert* v. *Bluejacket* the heir to certain allotted lands requested that the deed to Ewert be declared invalid be-

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[28] Ewert v. Bluejacket, 259 U.S. 129 (1922).

[29] *Mottaz*, 753 F.2d at 74.

[30] In County of Oneida v. Oneida Indian Nation (*Oneida II*), —— U.S. ——, 105 S.Ct. 1245, 1267 (1985) (Justice Stevens dissenting, joined by the Chief Justice, Justice White and Justice Rehnquist) (emphasis in original), four Justices concluded:

> A close examination of the *Ewert* [v. *Bluejacket*] case . . . indicates that the Court *applied* the doctrine of laches . . . .

[31] *See* Ewert v. Bluejacket, 259 U.S. 129 (1922); Kendall v. Ewert, 259 U.S. 139 (1922); Hampton v. Ewert, 22 F.2d 81 (8th Cir. 1927), *cert. denied*, 276 U.S. 623 (1928).



cause Ewert had purchased the land in violation of a federal statute that prohibited any person "employed in Indian affairs" from having an interest in any trade with Indians.[32] Ewert asserted the equitable defense of laches even though he had been responsible for the illegal act alleged as the basis for invalidating the land transfer. The Court denied him, as the wrongdoer, the benefit of laches, applying the traditional equitable principle that only one acting in good faith should be able to take advantage of laches. The decision rendered the transfer of Indian land void as to a purchaser who (apparently knowingly) violated the law.[33]

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[32] In Ewert v. Bluejacket the land in controversy was sold at public auction in the manner prescribed by the Secretary of the Interior. The Court assumed compliance with other restrictions on the alienation of the Indians' land. Ewert v. Bluejacket, 259 U.S. at 134-5. *See also* Kendall v. Ewert, 259 U.S. at 141-2 ("In the *Bluejacket Case* we have held that, assuming the sale to have been made in the public manner required by the rules of the department, all required action to have been, in form, properly taken, and the deed therein to have been approved by the Secretary of the Interior, nevertheless it was void because Ewert was prohibited . . . from then becoming the purchaser of such Indian lands. . . .").

[33] Some of Ewert's illegal purchases of Indian lands were particularly egregious because they violated rules established in judicial decisions where he had represented the United States. *See* Hampton v. Ewert, 22 F.2d at 89, noting Ewert's involvement in United States v. Noble, 237 U.S. 74 (1915). Ewert attempted to save at least one of his illegal purchases by procuring settlement of a law suit through fraud. *See* Kendall v. Ewert, 259 U.S. at 142. It is difficult to imagine a defendant less entitled to the benefits of an equitable defense.

Indeed, in *Oneida II*, 105 S.Ct. at 1267 (dissenting opinion) (emphasis supplied), Justice Stevens wrote:

> On the facts of *Ewert*, the Court found that the plaintiffs' burden of disproving laches was easily met, but the Court might well have reached a different conclusion in *Ewert* if the conveyance had not been so recent, *if the defendant had not been as blameworthy*, or the character of the property had changed dramatically in the interim.

By no means did the Court suggest that a claim to recover former Indian lands can be asserted at any time against any person. Nor did the Court suggest that persons not involved in the allegedly illegal transfer of Indian land could not later gain an interest in that land even if the original transfer from the Indians was in some manner illegal. To the contrary, the Court assumed that after recovering the land from Ewert the plaintiff Indian would have to pay the mortgage that Ewert had placed on the property to prevent foreclosure. The Court therefore stated that Ewert should indemnify the plaintiff.[34] In effect the Court held that the mortgage was a valid and enforceable lien, and it anticipated the possibility that the land could have passed from the Indian allottee through Ewert to the mortgagee in a foreclosure.

This Court in fact has made it clear that a transfer of Indian land in violation of federal law may not be set aside when the land at issue has been transferred to an innocent purchaser or substantial time has elapsed since the allegedly illegal transaction or the character of the land has changed. This is so even if the original transfer was void and the land might have been recoverable in the hands of a wrongdoer. For example, in *Schrimpscher* v. *Stockton*[35] the Court held that a conveyance of an Indian allotment in violation of a restriction on alienation contained in a federal treaty could not be challenged or set aside by the Indian heirs of the Wyandotte Indian who had conveyed the land. Among other things, the heirs argued that they retained title because the original transfer was void and that, as a result, no statute of limitation could run against the claim.[36] The Court rejected the argument, although it acknowledged that the original

[34] Ewert v. Bluejacket, 259 U.S. at 138. *See also* Kendall v. Ewert, 259 U.S. at 150.

[35] Schrimpscher v. Stockton, 183 U.S. 290 (1902).

[36] *Id.* at 296, 299.



transfer was void because it violated a restriction on alienation. When the restriction was later removed, the Indian heirs were required to bring their claim within the time period specified by state statutes of limitations. The later removal of the restriction did not change the nature of the illegal transfer, but it did make state statutes of limitations apply. And, even though the transfer in issue had been void for violation of the restriction on alienation,[37] statutes of limitations barred the claim to recover the land.

The Court's decision in *Felix* v. *Patrick*,[38] similarly demonstrates that an Indian claim for land "wrongfully alienated" may be barred, even if the transfer at issue was void for violation of a restriction on alienation, contrary to the Eighth Circuit's decision. The Court applied laches to a claim for land by the heirs of an Indian who had transferred land rights in the form of scrip in violation of a restriction on alienation. The Court acknowledged that the land rights had been obtained from the Indian in violation of a federal statute that provided that no transfer or conveyance of those rights would be valid.[39] Nevertheless, the Court affirmed dismissal of the case because the plaintiffs could not prove that the defendant and his grantees had participated in defrauding the Indian, and because innocent persons had developed and transformed the land at issue into extremely valuable property in the 28 years that had elapsed since the illegal transfer.

Lower courts have followed *Schrimpscher* and *Felix* in applying statutes of limitations and laches defenses to Indian land claims. Most recently, in *Dennison* v. *Topeka*

[37] The Court said that the deed from the allottee "was clearly void." *Schrimpscher*, 183 U.S. at 294.

[38] *Felix* v. *Patrick*, 145 U.S. 317 (1892).

[39] *Id.* at 325-6, 334.

*Chambers Industrial Dev. Corp.*[40] the Tenth Circuit Court of Appeals held, among other things, that a claim to recover former Indian lands was barred by state statutes of limitations which began to run against the claim once restrictions on alienation of the land had ended.

Three related decisions by the Tenth Circuit Court of Appeals concerning a series of illegal purchases of Indian allotments, *United States* v. *Debell*,[41] *United States* v.

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[40] Dennison v. Topeka Chambers Industrial Dev. Corp., 724 F.2d 869 (10th Cir. 1984), *aff'g*, 527 F. Supp. 611 (D. Kan. 1981). Similarly, *see* Armstrong v. Maple Leaf Apartments, Ltd., 622 F.2d 466 (10th Cir. 1979), *cert. denied*, 449 U.S. 901 (1980) (transfer of Indian land in violation of restriction could not be avoided by Indian transferor because laches barred claim); Dillon v. Antler Land Co., 507 F.2d 940 (9th Cir. 1974), *cert. denied*, 421 U.S. 992 (1975) (transfer of Indian land in violation of restriction could not be avoided by Indian transferor because state statutes of limitations barred claim); Wolfe v. Phillips, 172 F.2d 481 (10th Cir. 1949), *cert. denied*, 336 U.S. 968 (1949) (transfer of Indian land in violation of restriction could not be avoided because state statutes of limitations barred claim).

In each of these cases, the plaintiffs were time-barred, either by a statute of limitation or by laches. Thus, as a result, in each case title to the land remained in the hands of the purchaser or remote grantees in the purchaser's chain of title.

*See also* Duncan v. Andrus, 517 F. Supp. 1, 6 (N.D. Cal. 1977) where, in fashioning relief for a void termination of a reservation, the court protected innocent purchasers of former reservation lands. It directed the Indians who transferred their land to *bona fide* purchasers to pursue claims for monetary relief against the United States. And *see* Pechanga Band of Mission Indians v. Kacor Realty, Inc., No. CU-78-4499-MML, slip op. at 9 (C.D. Cal. Aug. 22, 1980), *aff'd on other grounds*, 680 F.2d 71 (9th Cir. 1982), *cert. denied*, —— U.S. ——, 103 S.Ct. 817 (1983) (Indian claim for land barred as to *bona fide* purchasers). And *see* Fife v. Barnard, 186 F.2d 655 (10th Cir. 1951) (transfer of Indian land in violation of restriction could not be avoided by Indians' heirs because defendants held superior title under applicable adverse possession statute).

[41] United States v. Debell, 227 F. 760 (1915).



*Debell*,[42] and *United States* v. *Debell*,[43] also highlight the Eighth Circuit's erroneous interpretation of *Ewert* v. *Bluejacket*. In these decisions the Tenth Circuit sharply distinguished between the remedies available in an action to recover restricted Indian lands, depending upon whether the wrongdoer still held the land. The Court allowed recovery of the land from the wrongdoer when he still held the land, but it allowed only recovery of compensation from the wrongdoer when the land had passed from him to an innocent purchaser. In each of these cases, the United States sought to cancel a land patent to an Indian in order to void a transfer of an Indian's land to Debell, an Indian trader, who colluded with others to defraud various Indians of their lands. The Indian allotments had been subject to restrictions on alienation, but the conspirators misrepresented the competence of each Indian in order to obtain fee patents which Debell then bought. In one case the government successfully recovered the land from Debell and cancelled the fee patent, so that the Indian and the land were returned to their original position.[44] In the other cases, however, Debell had already sold the land to persons who had purchased it in good faith, without knowledge of the circumstances in which it was obtained from the Indian. The court of appeals ruled that the innocent land purchasers held superior title. The United States could not recover the land for the Indian, although it could seek monetary compensation from Debell, the wrongdoer.[45]

The federal government has acted on the understanding that "wrongfully alienated" Indian lands may be recovered, *if* they are still in the hands of the wrongdoer.

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[42] United States v. Debell, 227 F. 771 (1915).

[43] United States v. Debell, 227 F. 775 (1915).

[44] *Debell*, 227 F. 775. *Accord*, Smith v. Stevens, 77 U.S. (10 Wall.) 321 (1870) (deed from Indian in violation of restriction held void in the hands of participant in illegal transfer).

[45] *Debell*, 227 F. 760; *Debell*, 227 F. 771.

In *Heckman* v. *United States*,[46] the Court held that the United States could maintain suit on behalf of Indian allottees to set aside conveyances of restricted Indian allotments where the United States was suing the initial grantees who participated in the illegal transactions. Significantly, the United States brought suit in this and more than 300 similar cases promptly, within one to five years after the illegal conveyances, while recovery from the original grantees was possible.[47]

In cases determining rights to real estate, the term "void" is used in two senses—first to mean a transaction where no interest was in fact transferred[48] and second to mean a transaction where the transfer was illegal but nevertheless conveyed an interest which could be avoided in some, but not all, circumstances.[49] Statutes of limita-

[46] Heckman v. United States, 224 U.S. 413 (1912).

[47] *Id.* at 415-17.

[48] In a transaction void in the first sense, the ostensible grantee receives no title or interest because the grantor, in fact, has none to give. Even if the grantee in turn sells his purported interest to one who purchases the land for value and in good faith, the innocent purchaser receives nothing because the grantee received nothing from the original grantor. *E.g.*, Sampeyreac v. United States, 32 U.S. (7 Pet.) 222 (1883) (Court held that a forged deed gave no right to the grantee and that a transfer from the grantee, in turn, conveyed nothing); Dodge v. Briggs, 27 F. 160, 166-7 (S.D. Ga. 1886) (contrasting the situation where a vendor has no title at all with the situation where the original transfer may have been void for fraud but where the vendor held an interest that could pass to a *bona fide* purchaser). *See generally* Missouri, Kan. & Tex. Ry. v. Kansas Pac. Ry., 97 U.S. (7 Otto) 491 (1878) (in dispute over two railway grants covering same land, the second grantee received nothing because the United States no longer had any title to convey); Pettibone v. Cook County, Minnesota, 120 F.2d 850, 855 (8th Cir. 1941) (although the United States had issued a land patent for certain islands in 1884, the islands had belonged to Canada since 1783).

[49] A transaction that is void in the second sense is voidable. It may be determined to have been void and then treated as void in



tions, laches and the *bona fide* purchaser doctrine may bar a claim based on a transaction void in the second sense, while other defenses such as adverse possession may bar a claim based on a transaction void in the first sense.[50]

Where Indian lands are "wrongfully alienated," the transaction is void in the second sense. The Indians hold an interest in the land that they may transfer even if the transfer violates special restrictions and even if the Indians are defrauded in the process.[51] The transfer may be avoided in an action against the participant in the illegal transaction—if no statute of limitation has run on the claim—but such a transfer does not give Indians a perpetual right to recover the land from every person who later holds an interest in it.

For example, the Court noted in *Schrimpscher* that the original allottee had held an interest in the land which he had only been prevented from conveying by the restriction on alienation and that such restrictions were to

appropriate circumstances, where no statute of limitation has run against the claim. For example, a fraudulent conveyance may be declared void, and, if the land is held by the person responsible for the fraud, it may be recovered. However, if the land has passed to a *bona fide* purchaser the person who was defrauded cannot recover the land from the BFP. Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 132-4 (1810). *See also* Wright-Blodgett, Co. v. United States, 236 U.S. 397 (1915); United States v. Detroit Timber and Lumber Co., 200 U.S. 321 (1906); United States v. California and Oregon Land Co., 148 U.S. 31 (1893); Colorado Coal and Iron Co. v. United States, 123 U.S. 307 (1887).

[50] *E.g.*, Kasey v. Molybdenum Corp. of Am., 336 F.2d 560 (9th Cir. 1964) (where plaintiffs argued that statute of limitation had not run on mining claim because they had retained title; but court held that even if transfer was fraudulent it was merely "voidable" and statute of limitation applied).

[51] *See generally Felix*, 145 U.S. at 335. *See also Duncan*, 517 F. Supp. at 6 (declaring that unauthorized transfers of restricted Indian land were not "voidable" in the hands of "non-Indian good faith purchasers.").

prevent Indians from being defrauded of the land.[52] The Court then carefully distinguished between the transaction at issue, which was void for violation of a restriction an alienation, and a transaction based on forgery, where the purported seller of land held no interest in the property and had nothing to transfer.[53] In so doing, the Court implicitly recognized that the statute of limitation defense was effective as to the type of transaction that violated a restriction but might not be with respect to the type of transaction that involved forgery.[54] The Court specifically rejected the argument adopted by the Eighth Circuit that no statute of limitation can apply to an Indian land claim based on an alleged violation of a restriction on alienation.

This also explains the result in *Ewert*, where the land could be recovered from the person who defrauded the Indian allottee but the innocent mortgagee held an enforceable lien on the property. A conveyance of Indian land in violation of a restriction on alienation, like any fraudulent conveyance, may be avoided in appropriate circumstances and the land recovered from the wrongdoer.[55] Similarly, in the *Debell* decisions where the

[52] *Schrimpscher*, 183 U.S. at 299.

[53] *Id.*

[54] *See, e.g., Kasey*, 336 F.2d at 568 (distinguishing between a deed void for fraud and a deed void because of forgery, and applying statute of limitation to claim based on the first type of deed). *See also* Begay v. Albers, 721 F.2d 1274 (10th Cir. 1983) (Indian claims to recover allotments were permitted to proceed because purported transfers of their interests were merely forgeries). *Cf.* Ewert v. Bluejacket, 259 U.S. at 138, where the Court noted that Ewert, the wrongdoer *had* received legal title to the Indian allotments he illegally purchased but the Court denied him the benefit of laches. Ewert's interest was treated as inferior to the equitable interest asserted by the Indian plaintiff, but the innocent mortgagee's interest was given effect.

[55] Where the perpetrator of the fraud still holds the land, a plaintiff's remedies include recovery of the land. *E.g., Exploration*, 247 U.S. at 447 ("To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure.") (*quoting* from Bailey v. Glover, 88 U.S. (21 Wall.) 342 (1874)).



wrongdoer still held the land wrongfully obtained from the Indian, the transaction could be avoided. Where Debell had transferred the land to a *bona fide* purchaser, the innocent third party received an interest in the land and, because of his BFP status, it was superior to the rights asserted on behalf of the Indian allottee.

Thus, a transfer of Indian lands in violation of a restriction on alienation may be avoided in some circumstances but not in others, and the Eighth Circuit erred in holding that a statute of limitation cannot apply to this plaintiff's action simply because the plaintiff alleges that the transfer at issue was void. The court of appeals more appropriately should have addressed whether the claim is subject to a statute of limitation and whether the plaintiff is barred by laches.

### IV. A Generally Applicable Federal Statute Of Limitation Can Apply To An Indian Land Claim.

The Eighth Circuit refused to apply any federal statute of limitation solely because the federal government has a general policy of protecting Indian lands.[56] In so doing, the court of appeals first erroneously declared that neither state statutes of limitations nor the doctrine of laches can ever bar a claim to recover "wrongfully alienated" former Indian lands.[57] By analogy, it then concluded that no existing federal statute of limitation can apply to such a claim. Citing no precedent, the court of appeals declared that Congress would have to provide spe-

[56] *Mottaz*, 753 F.2d at 74.

[57] *Id.* *See* the discussion above at 16-18 and n.40 for examples of the application of state law to certain Indian land claims.

cifically that a claim such as this is subject to a federal statute of limitation.[58] The court of appeals erred because its analysis of the law relating to Indians and Indian land claims was too superficial and because it failed to account for other equally strong federal policies and doctrines which are consistent with the application of a federal statute of limitation to an Indian land claim.

It is quite true that Indians generally hold a special status under federal law. The United States has asserted plenary authority over Indians,[59] and, ever since the seminal case of *Cherokee Nation* v. *Georgia*,[60] the resulting relationship between the federal government and Indians has been described as a "trust" relationship with the government functioning as "guardian" for its Indian "wards." [61] Pursuant to its special role in Indian affairs, the federal government has imposed a variety of general and particular restrictions on Indians and Indian lands.[62] Where there is a conflict between the application of state law to Indians and their lands and the special provisions

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[58] *Mottaz*, 753 F.2d at 74.

[59] *E.g.*, United States v. Sioux Nation, 448 U.S. 371 (1980); Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977); Federal Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99 (1960).

[60] Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

[61] *E.g.*, Seminole Nation v. United States, 316 U.S. 286, 296-7 (1942); *Heckman*, 224 U.S. at 434; *Felix*, 145 U.S. at 330-31; United States v. Kagama, 118 U.S. 375, 383-4 (1886); Chouteau v. Moloney, 57 U.S. (16 How.) 203, 237-8 (1853).

[62] *E.g.*, the Nonintercourse Act, now codified at 25 U.S.C. § 177 (1982) (restricting alienation of tribal lands); the General Allotment Act of 1887 (Dawes Act), now codified at 25 U.S.C. § 331 *et seq.* (1982) (allotments to individual Indians authorized with trust period preventing alienation); the Indian Reorganization Act of 1934, now codified at 25 U.S.C. § 461 *et seq.* (1982) (trust period extended restricting alienation of allotments).



that the federal government has made for their protection, federal law prevails.[63]

However, decisions that state law time bars may not apply to certain Indian claims based on the supremacy of federal law in Indian affairs do not dictate what law the federal government may apply.[64] There is no conflict between state and federal law in a case such as the one now before the Court, which involves only federal actions and federal laws.

The Eighth Circuit seems to suggest that the federal government's general policy of protecting Indian lands conflicts with the application of a federal statute of limitation to this claim. But application of a general federal statute of limitation to a claim for land which the federal government itself has purchased and removed from Indian ownership hardly creates a conflict in federal policy relating to the specific tract of land. The general

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[63] County of Oneida v. Oneida Indian Nation (*Oneida II*), —— U.S. ——, 105 S.Ct. 1245 (1985) (Congress had specifically provided that state law would not apply to pre-1952 claims in enacting a statute that otherwise gave state courts civil jurisdiction over Indians); Schrimpscher v. Stockton, 183 U.S. 290 (1902) (restriction on alienation had been removed and federal trusteeship ended, so state statutes of limitations could apply to Indian claim without conflicting with federal law); McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973) (the United States may preempt the application of state law to Indians); United States v. Heath, 509 F.2d 16 (9th Cir. 1974) (state law applied to Indian when federal government ended special status).

*Cf.* Wilson v. Omaha Indian Tribe, 442 U.S. 653, 673-76 (1979) (state rules concerning accretion and avulsion held applicable to Indian land claim because states and private landowners had reasonably relied on state law in purchasing property and no overriding federal interest was threatened.).

[64] *See* Big Spring v. United States Bureau of Indian Affairs, 767 F.2d 614, 617 (9th Cir. 1985) (six-year federal statute of limitation for claims against the United States applied to Indian claim despite special trust relationship with federal government); Christensen v. United States, 755 F.2d 705 (9th Cir. 1985) (same).

federal policy of protecting Indian lands is irrelevant where the federal government has decided that the land in issue is no longer Indian land. *See Grosz* v. *Andrus*,[65] where the court held that the general federal statute of limitation for quiet title actions against the United States applied to a claim by Indians that an easement granted over 30 years before was invalid.

Moreover, the Eighth Circuit ignored other equally strong federal policies to reach its result. As the Tenth Circuit explained in applying the twelve-year federal statute of limitation for quiet title actions in *Stubbs* v. *United States*,[66] sovereign immunity protects broad federal interests, and waivers of that immunity should be narrowly construed. In particular, the courts should avoid a construction of the law that would allow claims to quiet title against the United States "no matter how ancient." [67]

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[65] Grosz v. Andrus, 556 F.2d 972 (9th Cir. 1977). Similarly, *see Big Spring*, 767 F.2d 614 (Indian mineral rights claim barred by six-year federal statute of limitation on civil actions against United States where government had previously given rights to others); *Christensen*, 755 F.2d 705 (Indian claim for access to allotment barred by six-year federal statute of limitation); Lemieux v. United States, 15 F.2d 518 (8th Cir. 1926), *cert. denied*, 273 U.S. 749 (1927) (Indian land claim barred by laches where the federal government had disposed of the land the plaintiff contended was his). Similarly, *see* Mann v. United States, 399 F.2d 672 (9th Cir. 1968) (general federal statute of limitation for actions under Federal Tort Claims Act barred claim by Indian).

[66] *Stubbs*, 620 F.2d at 780.

[67] *Id.*



## CONCLUSION

The court of appeals' decision that no federal statute of limitation can apply to the plaintiff's claim was erroneous for all of the reasons set forth above. The decision should be reversed.

Respectfully submitted,

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